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20-037C&E CAB

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DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,)	DOCKET NO. 18-CA-EO-04
STATE OF HAWAII,)	
)	Well Drilling Rig with Six (6)
Complainant,)	Diesel Engines
)	
vs.)	
)	
WATER RESOURCES INTERNATIONAL, INC.,)	
)	
)	
Respondent)	
)	

CONDITIONAL AGREEMENT TO SIGN CONSENT ORDER


Prior to signing the attached proposed Consent Order, the Department of Health ("DOH") and WATER RESOURCES INTERNATIONAL, INC. ("Respondent"), agree to comply with the public notice and comment provisions of Hawaii Revised Statutes ("HRS"), Section 342B-55.

The DOH and Respondent agree to sign the proposed Consent Order as written if no comments are submitted during the public comment period or, if after the DOH's review of the comments submitted, the DOH still concludes that the proposed Consent Order is appropriate. If DOH does not so conclude, the DOH and

Respondent will use their best efforts to agree on changes to be made. If, after a reasonable time, the DOH determines that such efforts will not result in agreement, the DOH shall set a date and time for a hearing on the issues raised by the Notice and Finding of Violation and Order in this matter and shall notify the Respondent of such hearing, pursuant to HRS Chapter 91.

DATED: Honolulu, Hawaii, _____

DEPARTMENT OF HEALTH
STATE OF HAWAII

By: 
KEITH E. KAWAOKA, D.ENV.
Deputy Director for Environmental Health

DATED: Honolulu, Hawaii, _____

WATER RESOURCES INTERNATIONAL, INC.

By: 
RUSSELL GIFFORD
President

APPROVED AS TO FORM:

William Cooper

WILLIAM F. COOPER
Deputy Attorney General

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DEPARTMENT OF HEALTH

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DEPARTMENT OF HEALTH,)	DOCKET NO. 18-CA-EO-04
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vs.)	
)	
WATER RESOURCES INTERNATIONAL, INC.,)	
)	
)	
Respondent)	
)	

CONSENT ORDER

The Department of Health ("DOH"), State of Hawaii, and WATER RESOURCES INTERNATIONAL, INC. ("Respondent"), enter into this Consent Order pursuant to Hawaii Revised Statutes ("HRS") Chapter 342B and Air Pollution Control rules, Hawaii Administrative Rules ("HAR") Chapter 11-60.1.

1. STIPULATED FACTS AND FINDINGS

Respondent is a foreign profit corporation organized and existing under the laws of the State of Delaware registered as a foreign profit corporation with the Business Registration Division, Department of Commerce and Consumer Affairs, State of Hawaii. Respondent owns, operates, manages, and controls the Well Drilling Rig with Six (6) Diesel Engines located at various temporary sites throughout the State of Hawaii.

On July 11, 2019, DOH issued Respondent a Notice and Finding of Violation and Order ("NOVO"), under Docket No. 18-CA-EO-04, alleging that Respondent violated HAR Section 11-60.1-2; and HRS Section 342B-11; and the following conditions of Temporary Noncovered Source Permit ("NSP") No. 0490-01-NT:

- 1) Attachment II, Section D, Special Condition No. 2:
Failed to submit the semi-annual monitoring reports within sixty (60) days after the end of each semi-annual calendar period for the following periods:
 - a) July to December 2016 report was submitted late on April 29, 2017, sixty (60) days after the due date of March 1, 2017;
 - b) January to June 2017 report was not submitted;
 - c) July to December 2017 report was not submitted;
 - d) January to June 2018 report was not submitted; and
 - e) July to December 2018 report was not submitted.
- 2) Attachment II, Section D, Special Condition 3.a:
Failed to submit the annual emissions report within sixty (60) days after the end of the following calendar years:
 - a) 2016;
 - b) 2017; and
 - c) 2018.

- 3) Attachment III, Annual Fee Requirements: Failed to submit the 2018 annual fee payment within sixty (60) days after the end of the calendar year.

The DOH assessed an initial penalty of SEVEN THOUSAND TWO HUNDRED DOLLARS AND NO CENTS (\$7,200.00) for the alleged violations of Temporary NSP No. 0490-01-NT found under NOVO Docket No. 18-CA-EO-04.

On July 23, 2019, the DOH received payment in the amount of FIVE HUNDRED DOLLARS AND NO CENTS (\$500.00) for calendar year 2018 annual fee.

Subsequent to the issuance of the NOVO under Docket No. 18-CA-EO-04, pursuant to a records review conducted on August 2, 2019, the DOH and Respondent discussed, via telephone, the NOVO found under Docket No. 18-CA-EO-04 and subsequent violations. The DOH further alleges that Respondent violated the following conditions of Temporary NSP 0490-01-NT:

- 4) Attachment I, Standard Condition 24: Failed to submit a renewal permit application prior to sixty (60) days of the permit's expiration date of May 15, 2018.
- 5) Attachment II, Section B, Special Condition 1.h: Exceeded 1850 hours in the rolling twelve (12) month period for the following months of 2018:
 - a) October;
 - b) November; and
 - c) December.
- 6) Attachment II, Section B, Special Condition 3: Failed to submit a location change during the five (5) year term of the May 16, 2013 to May 15, 2018 permit period.

The DOH and Respondent agreed to a penalty of SEVEN THOUSAND TWO HUNDRED DOLLARS AND NO CENTS (\$7,200.00) for the existing, and newly alleged violations found in the DOH records for Temporary NSP No. 0490-01-NT.

DOH and Respondent have agreed to settle their disputes without the risks of adverse findings and conclusions, or a final order or judgment after litigation.

2. EFFECT OF SETTLEMENT ON PENDING NOTICE OF VIOLATION AND/OR
OTHER PENDING VIOLATIONS

This Consent Order and any actions taken to comply with its terms are not admissions of violation, fault, or liability by the Respondent. This Consent Order settles and resolves all civil liability of Respondent to the DOH for allegedly violating HAR, Subsection 11-60.1-2, HRS, Section 342B-11, and all alleged violations of Temporary NSP No. 0490-01-NT, set forth in NOVO Docket No. 18-CA-EO-04 dated July 11, 2019, and set forth in this instant Consent Order in Section 1.

3. SETTLEMENT AGREEMENT

From the effective date of this Consent Order, Respondent will continue to use its best efforts to minimize violations of their permit conditions.

The effect of this Settlement, and the definitions, obligations, terms, conditions, and/or any and all other aspect(s) of the agreement contained in each and every paragraph of this Consent Order, except the dismissal of the underlying Notice of Violation and other pending violations contained in Section 2 of this Consent Order, shall end and shall no longer be binding on either party, once the Consent Order is terminated pursuant to Section 12, of this Consent Order.

Within thirty (30) days of the effective date of this Consent Order, Respondent will pay an administrative penalty of SEVEN THOUSAND TWO HUNDRED DOLLARS AND NO CENTS (\$7,200.00) in one (1) installment by cashier's check, made payable to the State of Hawaii, and sent to the Manager of the Clean Air Branch at the address set forth in Section 4 of this Consent Order.

Respondent shall not deduct any part of this penalty from its federal or state tax liability. Failure to pay the penalty fine on time shall be deemed a default and a violation of this Consent Order.

4. NOTIFICATION

Whenever, under the terms of this Consent Order, notice or payment is required to be given by one party to another, such notice or payment shall be directed to the individuals specified below, at the address given, unless a party gives notice in

writing to the other party that another individual has been designated to receive such communications:

Ms. Marianne Rossio, P.E.
Manager, Clean Air Branch
Hawaii State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801
Telephone: (808) 586-4200
Fax: (808) 586-4359

Mr. Russell Gifford
President
Water Resources International, Inc.
1100 Alakea Street, Suite 2900
Honolulu, Hawaii 96813
Telephone: (808) 531-8422
Telefax: (808) 531-7181

5. ACTIONS AGAINST OTHER PARTIES

This Consent Order does not limit or affect the rights of the Respondent or the DOH against any third parties.

6. AUTHORITY OF SIGNATORIES

Each undersigned representative of a party to this Consent Order certifies that he or she has full authority to enter into the terms of this Consent Order and legally to bind the party which he or she represents.

7. BINDING EFFECT

The provisions of this Consent Order shall apply to and be binding upon all parties to this action, their trustees, servants, employees, successors, assignees, and attorneys, until terminated pursuant to Section 12. Respondent shall give notice of this

Consent Order to any successors in interest prior to transfer of ownership and to any contractor performing activities contemplated by this Consent Order and shall submit a copy of each such notice to the DOH, until the Consent Order is terminated pursuant to Section 12.

8. ENTIRE AGREEMENT

This Consent Order sets forth the entire agreement between the parties with respect to this matter.

9. EFFECTIVE DATE

This Consent Order shall become effective as soon as it has been signed by both parties.

10. MODIFICATIONS

This Consent Order shall not be modified except in writing, signed by both parties.

11. NO TAX BENEFITS

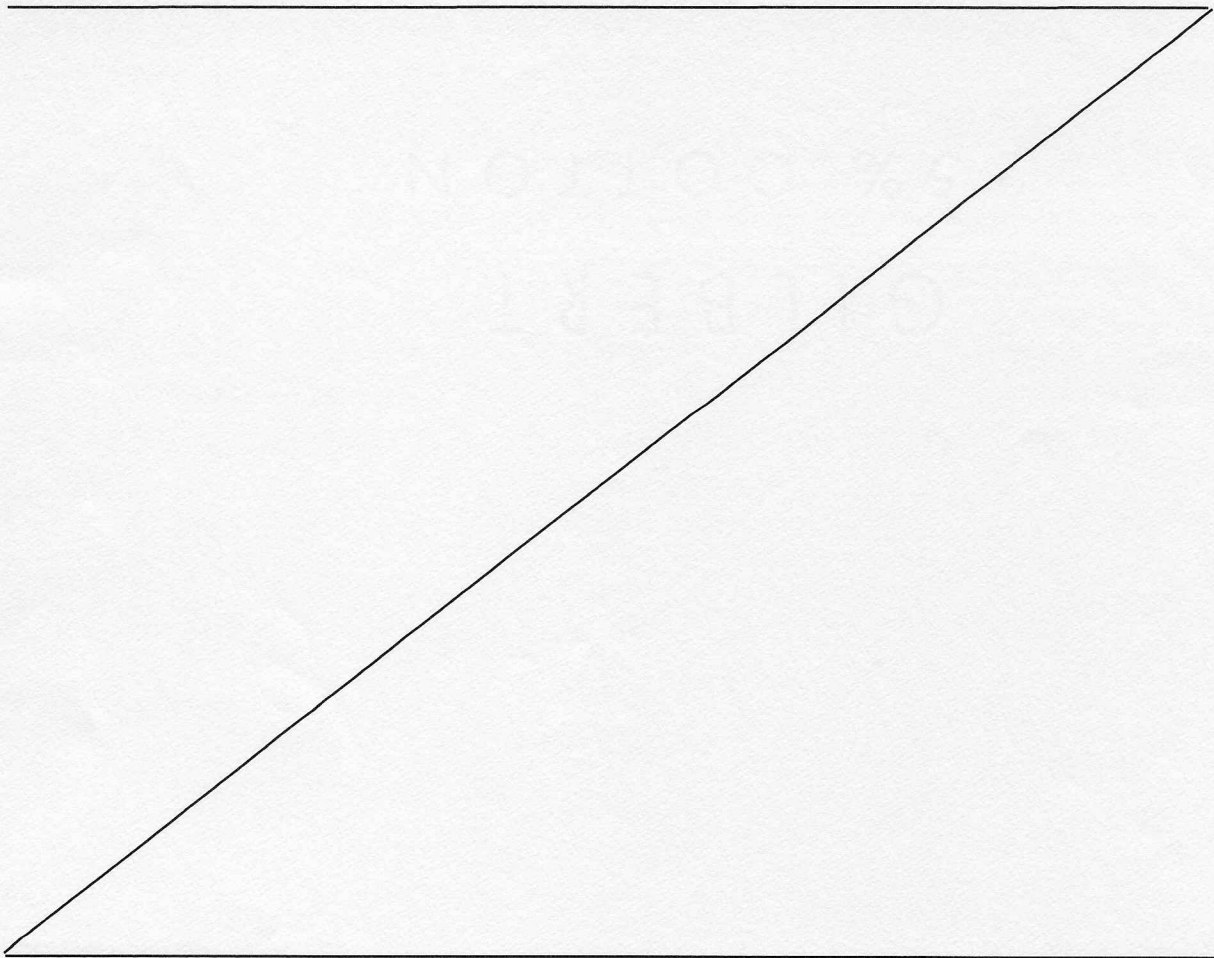
Respondent shall not deduct any of the penalty amount paid pursuant to this Consent Order from its federal or state taxable income, nor shall Respondents claim any tax credits for said penalty amount.

12. TERMINATION

Within thirty (30) days of DOH's determination that Section 3 of this Consent Order are satisfied, the DOH shall issue a letter to Respondent acknowledging the satisfactory compliance, which shall terminate this Consent Order.

13. EFFECT

This Consent Order constitutes the final order in this case, replacing the NOVO under Docket No. 18-CA-EO-04, dated July 11, 2019.



14. COSTS

Each party shall bear its own costs and attorney's fees.

DATED: Honolulu, Hawaii, _____

DEPARTMENT OF HEALTH
STATE OF HAWAII

By: _____
KEITH E. KAWAOKA, D.ENV.
Deputy Director for Environmental Health

DATED: Honolulu, Hawaii, _____

WATER RESOURCES INTERNATIONAL, INC.

By: _____
RUSSELL GIFFORD
President

APPROVED AS TO FORM:

William Cooper

WILLIAM F. COOPER
Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF HEALTH
CLEAN AIR BRANCH
NOTICE AND FINDING OF VIOLATION

TO: Water Resources International, Inc. 1100 Alakea Street, Suite 2900 Honolulu, Hawaii 96813 RESPONDENT	NOVO No. 18-CA-EO-04 <i>(Please write this NOVO number on all correspondence)</i> Re: Temporary Noncovered Source Permit (NSP) No. 0490-01-NT Property/Facility: Well Drilling Rig with Six (6) Diesel Engines Kamuela, Hawaii
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Under Hawaii Revised Statutes ("HRS"), §342B-11, Hawaii Administrative Rules ("HAR") §11-60.1-2, and Temporary NSP No. 0490-01-NT, the Department of Health, Clean Air Branch ("DOH"), issues this Notice and Finding of Violation and Order ("NOVO"). Based on records reviews of the permitted equipment at the temporary location listed above, the DOH finds the following violation(s) alleged below. This case deals only with the violations alleged below, and the DOH may bring other cases for other violations. This case does not limit cases by any other public agency or private party.

Statutes/Rules	HRS, §342B-11, HAR §11-60.1-2, Temporary NSP No. 0490-01-NT, Attachment II, Section D, Special Condition 2, Attachment II, Section D, Special Condition 3.a, and Attachment III.
Nature of the Violation	<ol style="list-style-type: none">1) Attachment II, Section D, Special Condition 2: Failed to submit the July to December 2016 semi-annual monitoring report within sixty (60) days after the end of the semi-annual calendar period. The report was submitted late on April 29, 2017, fifty-nine (59) days after the due date of March 1, 2017.2) Attachment II, Section D, Special Condition 2: Failed to submit the semi-annual monitoring report within sixty (60) days after the end of the following semi-annual calendar periods:<ol style="list-style-type: none">a) January to June 2017;b) July to December 2017;c) January to June 2018; andd) July to December 2018.3) Attachment II, Section D, Special Condition 3.a: Failed to submit the annual emissions report within sixty (60) days after the end of the following calendar years:<ol style="list-style-type: none">a) 2016;b) 2017; andc) 2018.4) Attachment III, Annual Fee Requirements: Failed to submit the 2018 annual fee payment within sixty (60) days after the end of the calendar year.

The facts of this case and the law justify the following order.

ORDER

You are ordered to:

1. Take corrective action within twenty (20) days after the receipt of this Order, to prevent further violations, if RESPONDENT has not already done so.
2. Within twenty (20) days after the receipt of this Order, notify the DOH of the corrective actions taken.
3. Pay the outstanding annual fee of **FIVE HUNDRED DOLLARS AND NO CENTS (\$500.00)** for calendar year 2018 **within 20 days after the receipt of the NOVO**. Send a certified check to: Clean Air Branch, State Department of Health, P.O. Box 3378, Honolulu, Hawaii 96801. The check should be made payable to the "Clean Air Special Fund - NON" and include the NOVO reference number stated above.
4. Pay an administrative penalty of **SEVEN THOUSAND TWO HUNDRED DOLLARS AND NO CENTS (\$7,200.00)** for the above violations. **Within 20 days after the receipt of the NOVO**, send a certified check to: Clean Air Branch, State Department of Health, P.O. Box 3378, Honolulu, Hawaii 96801. The check should be made payable to the "State of Hawaii" and include the NOVO reference number stated above.

This NOVO becomes final and enforceable, and the penalty becomes due and payable 20 days after your receipt of this NOVO unless before the 20 days expire, you submit a **written** request for a hearing to the Hearings Officer, Department of Health, 1250 Punchbowl Street, Third Floor, Honolulu, Hawaii 96813 and to the Clean Air Branch, State Department of Health, P.O. Box 3378, Honolulu, Hawaii 96801. In the request, include a copy of the NOVO. At a hearing, you may seek to avoid any penalty, and the DOH may seek the maximum penalty of Twenty-Five Thousand Dollars (\$25,000) per day, per violation. Parties may present evidence and witnesses on their behalf and may examine and cross-examine all witnesses and evidence presented by the DOH. Parties may be represented by lawyers at their own expense, or they may represent themselves. Any hearing will follow HRS, Chapters 91 and 342B, and the DOH Rules of Practice and Procedure. After a hearing, the Director of Health or designated appointee will decide the actual administrative penalty, which may be more or less than the penalty in this Order, or no penalty at all. If you have questions, please call Ms. Jill Stensrud, Supervisor of the Compliance and Enforcement Section, Clean Air Branch, at (808) 586-4200.

If you have special needs due to a disability that will aid you in participating in the hearing or pre-hearing conference, please contact the Hearings Officer at (808) 586-4409 (voice) or through the Telecommunications Relay Service (711), at least ten (10) working days before the hearing or pre-hearing conference date.

JUL 11 2019

KEITH E. KAWAOKA, D.Env.
Deputy Director for Environmental Health

Date

Approved as to form by:

William E. Carter